

TRUTH IN LENDING:  
DIVISION OF FINANCE:  
CREDIT:

Federal Truth In Lending Act super-  
sedes Missouri Credit Law where  
disclosures would be inconsistent  
with federal system; other provisions  
of Missouri law remain in force.

OPINION NO. 271

October 9, 1969

Mr. C. W. Culley  
Commissioner of Finance  
Department of Business and  
Administration  
12th Floor-Jefferson Building  
Jefferson City, Missouri 65101

Dear Mr. Culley:

This is in response to your request for an opinion from this office regarding several matters dealing with "Truth in Lending" disclosures. You indicate the underlying question is ". . .whether regulated extenders of credit in Missouri must make two virtually identical disclosures, one using the terminology required by the federal regulation and the other using the words of the Missouri law?"

With regard to the matter of terminology, the Truth in Lending Act itself does not require the use of any particular terminology, 15 U.S.C., §1632(a); however, Federal Reserve Regulation Z, 34 Fed. Reg. 2002 (1969), does require that particular terminology be used in making the various disclosures, §§226.6(a), 226.7, and 226.8. The applicable Missouri statutes require that contracts involving credit contain certain enumerated items but do not require that any particular terminology be used in conveying the required information, §365.070-6, RSMo Supp. 1967, Laws 1963 p. 466 §7 ("shall contain the following items"); §408.130-1, RSMo Supp. 1967, Laws 1965 p. 114 §1 ("a written statement . . . showing in clear and distinct items"); §408.260-5, RSMo Supp. 1967, Laws 1961 p. 638 §3 ("shall contain the following items"). Thus although it is clear that use of Missouri terminology would not satisfy the requirements of Regulation Z, it is the view of this office that where the information conveyed under the federally required disclosure is the same as that required under a corresponding Missouri statute, disclosure in federal terminology satisfies the Missouri requirement.

Mr. C. W. Culley

However, as is indicated below, there are differences in addition to those dealing with terminology or labels between the federal statute and regulations on the one hand and the Missouri statutes on the other. The federal statute, 15 U.S.C., §1610(a), provides by implication that a creditor need not comply with any inconsistent state laws; thus to the extent that Missouri law is inconsistent with the federal law a creditor need make only the federally required disclosures. Where there is an inconsistent Missouri disclosure, a creditor may make such disclosure, but only if the disclosure is made on a separate paper or is made on the same statement below a conspicuous demarcation line and conspicuously labeled as inconsistent; in the later case, the federally required disclosures must be identified as such by a clear and conspicuous heading. Federal Reserve Regulation Z, §226.6(c).

The substantive differences between the Missouri disclosure requirement and the federal requirements can be indicated in connection with the various questions you have posed. The first specific question asked is:

"Specifically, will the use of the term 'unpaid balance' suffice in satisfying subdivision (9) of §365.070 6. and subdivision (6) of §408.260 5."

The above mentioned sections require that the "principal balance" be disclosed. "Unpaid balance" is the federally required terminology; and the elements included in that term are the "unpaid balance of the cash price" and all other charges, individually itemized, which are included in the amount financed but are not part of the "finance charge." "Finance charge" under the federal requirements includes, among other things: "Charges or premiums for credit life, accident, health, . . . insurance, written in connection with any [consumer] credit transaction. . . ." except in certain specified situations, i.e., where the insurance coverage is not a factor in the approval of the extension of credit, 15 U.S.C., §1605(b); Federal Reserve Regulation Z, §226.4(a)(5), 34 Fed. Reg. 2004 (1969). Also included in the term "finance charge" under the federal requirements are "Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, . . ." unless the creditor furnishes a statement in writing to the person to whom credit is extended of the cost of the insurance if obtained from or through the creditor, and stating that the person to whom credit is extended may choose through whom the insurance is to be obtained, 15 U.S.C., §1605(c); Federal Reserve Regulation Z, §226.4 (a)(6), 34 Fed. Reg. 2004 (1969). Although the cost of the above type of insurance is included in the term "finance charge" under the federal requirements, except in those particular instances noted, and thus will not be one of the elements of the figure "unpaid balance," the contrary is the case under the Missouri requirements. §365.070, RSMo Supp. 1967, Laws 1963 p. 446 §7, provides that the

Mr. C. W. Culley

"principal balance" is the sum of certain items, among which are: "The aggregate amount, if any, if a separate identified charge is made therefor, included for all life, accident or health insurance, . . ." and "The amounts, if any, if a separate identified charge is made therefor, included for other insurance and benefits, . . ."

Likewise, §408.260, RSMo Supp. 1967, Laws 1965 p. 95 §2, provides that one of the elements of the "principal balance" is: "The amount, if any, if a separate charge is made therefor, included for insurance and other benefits, . . ."

Furthermore in Missouri, both §365.070, RSMo Supp. 1967, and §408.260, RSMo Supp. 1967, require that the principal balance include the amount of official fees and insurance. The term "official fees" is defined in §365.020, RSMo Supp. 1967, and in §408.250, RSMo Supp. 1967, as ". . .the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail time transaction." Federal Reserve Regulation Z, §226.4(b) provides that if itemized and disclosed to the customer, certain fees and charges paid to public officials, taxes not included in the cash price, and license fees need not be included in the finance charge; when so itemized they are classified in a separate category for other charges, Federal Reserve Regulation Z, §226.8(c)(4). If they are not itemized and separately disclosed, they must be considered a part of the finance charge for federal purposes under 15 U.S.C., §1605(d)(1), see Federal Reserve Regulation Z, §226.4. If they are disclosed, they would appear as part of the federally specified "unpaid balance," although not as part of the "unpaid balance of cash price."

Thus, as a general rule, the elements of insurance, taxes not included in the cash price, and official fees will not enter into the calculations to determine "unpaid balance" for the federal disclosure, but those elements will be a factor in the calculations to determine "principal balance" for the Missouri disclosure. Therefore, the use of the term "unpaid balance" will not necessarily satisfy the disclosure of the "principal balance" as required by Missouri statutes.

The second specific question is:

"Will 'finance charge' satisfy subdivision (10) of §365.070 6. and subdivision (7) of §408.260 5. which use the terms 'time price differential' and 'time charge' respectively?"

"Time charge" is defined as, ". . .the amount, however denominated or expressed, in excess of the cash sale price under a retail charge agreement or the principal balance under a retail time contract which a retail buyer contracts to pay or pays for goods or services. It includes the extension to the buyer of the privilege of paying therefor in one or more deferred payments." §408.250(12), RSMo Supp. 1967, Laws 1961 p. 638 §2. "Time price differential" is defined as, ". . . the amount, however denominated or expressed, as limited by section 365.120, in addition to the principal balance to be paid

Mr. C. W. Culley

by the buyer for the privilege of purchasing the motor vehicle on time to be paid for by the buyer in one or more deferred installments;" §365.020(14), RSMo Supp. 1967. Insofar as either "time charge" or "time price differential" is determined in relation to "principal balance," it is apparent that the figure for either may not be the same as the figure for the federally required "finance charge." For, as mentioned previously, the insurance premiums generally will be included in the figure for "finance charge" under the federal requirements, while under the state requirements the insurance premiums would generally be included in the figure "principal balance" rather than in the figure for "time charge" or "time price differential."

Further discrepancies could also arise between the figure for "finance charge" and the figure for either "time charge" or "time price differential." For example, under the federal requirements official fees are to be included as elements of the "finance charge" unless itemized and disclosed to the customer, 15 U.S.C., §1605(d) (1), Federal Reserve Regulation Z, §226.4(b)(1), 34 Fed. Reg. 2004 (1969). If they are so itemized and disclosed, they are to be included in "other charges." §408.260-5(5), RSMo Supp. 1967, indicates that official fees are to be separately stated and then are included in the figure for "principal balance." Thus although they are not included as a part of the "time charge," specified by state law, they will be a part of the federally required "finance charge" unless itemized and disclosed.

The next specific question is:

"Will 'total of payments' satisfy subdivision (10) of §365.070 6. and subdivision (8) of 408.260 5. which use the term 'time balance'?"

Federal Reserve Regulation Z, §226.8(b)(3), 34 Fed. Reg. 2008 (1969), requires that for credit other than open end, the creditor shall disclose "The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and, . . . the sum of such payments using the term, 'total of payments.'" §365.070-6(11), RSMo Supp. 1967, Laws 1963 p. 446 §7, requires in retail installment contracts that the creditor disclose "The total amount of the time balance stated as one sum in dollars and cents, which is the sum of items (9) and (10), [principal balance and time price differential] payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof; . . ." §408.260-5(8), RSMo Supp. 1967, Laws 1965 p. 95 §2, provides that the contract shall contain "The amount of the time balance, which is the sum of items (6) and (7), [principal balance and time charge] payable in one or more deferred payments

Mr. C. W. Culley

by the buyer to the seller, the amount of each such payment and the due date or period thereof;". Although individual calculations are made and treated somewhat differently along the way under the federal and state requirements, as has been indicated above, the total indebtedness figure will be the same under the federal or state requirements on any particular sale or loan, and so also will be the number of payments, the amount of each and the due date or period of each. Therefore, it is the view of this office that the federal requirements as to this particular disclosure are compatible with the comparable Missouri disclosure requirements.

The next question is:

"Will 'deferred payment price' satisfy the requirements of subdivision (12) of §365.070 6. and subdivision (9) of §408.260 5.?"

Again, as was the case of the prior inquiry, although the various elements going together to make up the "deferred payment price" or the "time sale price" may be labeled in different ways and treated somewhat differently depending upon whether the disclosure is in accordance with federal or state requirements, the sum of the various items will make the same total in either instance. Federal Reserve Regulation Z, §226.8(c)(8) defines "deferred payment price" to be the cash price, plus the finance charge, plus all other charges which are included in the amount financed but which are not part of the finance charge. Under §408.250(13) and §365.020(15), RSMo Supp. 1967, "time sale price" means the total of the cash sale price of the item sold, the amount included for any insurance and other benefits separately identified, official fees, and the time charge or time price differential. Therefore, it is the view of this office that on any particular loan or sale, compliance with the federal requirement as to statement of the "deferred payment price" is compatible with the Missouri statutory requirement that the "time sale price" be disclosed.

The next question is:

"Are there any terms in the third column [of the sheet attached to the request] which would not satisfy the similar disclosure requirements of the 'motor vehicle time sales act' or the 'retail credit sales act'?"

The terms in the third column referred to in the question are some of the federally required terms. It is the view of this office that there are substantive differences in some of these terms, and thus the related Missouri requirements are inconsistent. Consider first the federal term "cash price" and the corresponding state

Mr. C. W. Culley

term "cash sale price." Elements of "cash price" are set forth in Federal Reserve Regulation Z, §226.2(i), 34 Fed. Reg. 2003 (1969), and may include taxes to the extent imposed on the cash sale "but shall not include any other charges of the types described in §226.4." Among the items included in the charges described in §226.4, the section prescribing elements of the finance charge, are: fees and charges paid to public officials, license fees, registration fees, and certificate of title; and in real property transactions, fees or premiums for title examination, abstract of title, and title insurance. "Cash sale price" is defined in §408.250(9), RSMo Supp. 1967, Laws 1961 p. 638 §2, and the statute provides official fees may be included and, where real property is involved, reasonable fees and costs actually to be paid for construction permits and similar fees, the services of an attorney and any title search and title insurance. The definition of "cash sale price" under §365.020(1), RSMo Supp. 1967, Laws 1963 p. 466 §2, includes registration, certificate of title, license, and other fees. It appears that items which the Missouri statutes contemplate being categorized under the heading "cash sale price" are items which the federal law categorizes under "finance charge" or "other charges." In making the federal disclosure these items will not appear in "cash price."

The question next arises as to the proper application under Missouri law of the provision that official fees "may" be included in "cash sale price." It is the opinion of this office that any amounts required by §408.260-5(5), RSMo Supp. 1967, to be disclosed as "official fees" cannot be included as an element in the cash sale price. Such amounts must be disclosed under the separate category and their inclusion in the basic cash sale price would result in a double addition of the amounts in making the final calculation of the time sale price.

For the remaining items, it is apparent that the method of handling these elements under the Missouri statutes is contrary to the method expressly directed by federal law. There is also the danger that disclosures complying with the federal requirements will be viewed as falling short of compliance with the spirit and intent of the Missouri statutes.

This latter problem arises in the matter of down payment and trade-in. The federal disclosure provisions regarding trade-in do not require any description of the property traded in. Federal Reserve Regulation Z, §226.8(c)(2), 34 Fed. Reg. 2008 (1969), 15 U.S.C., §1638(2), while the Missouri provisions for both the motor vehicle contracts and retail time contracts require "a brief description of the goods traded in," §365.070-6(2), RSMo Supp. 1967, Laws 1963 p. 466 §7; §408.260-5 (2), RSMo Supp. 1967, Laws 1965 p. 95 §2. Thus mere conformity in this regard with the federal requirement would not satisfy a substantive Missouri disclosure requirement.

Mr. C. W. Culley

In this instance, the Missouri law is not superseded by the federal provisions and a seller must, in addition to making the federal disclosures, set out the additional information required by state law.

For the reasons mentioned previously with regard to the elements of "cash price" and "cash sale price," there is the same danger of inconsistency between the federal provisions and substantive Missouri requirements insofar as the terms "unpaid balance of cash price" (federal terminology) and "the difference" (Missouri terminology) are concerned. If there is in fact a difference between the figures for "cash sale price" and "cash price," it is apparent that there will be a corresponding difference in the figures for "the difference" and "unpaid balance of cash price" because the identical amount of down payment and trade-in is deducted from "cash sale price" under Missouri law and "cash price" in the federal scheme.

The federal term "all other charges" you have associated with the Missouri requirement dealing with charges for insurance coverage and other benefits separately described. As mentioned previously, the figures representing these items would vary depending upon whether the disclosure is made in conformity with the federal requirements or in conformity with the state requirements. It will be recalled that "other charges" typically will not include charges for insurance coverage, unless itemized and disclosed to the customer, this item being part of the "finance charge." Additionally, some of the items which, if separately itemized and disclosed, the federal requirements contemplate showing under the heading of "other charges" include items which the state requirements authorize to be included under the heading "cash sale price," e.g.: license, certificate of title, and registration fees, see §365.020(1), RSMo Supp. 1967; title insurance and preparation of abstract, see §408.250(9), RSMo Supp. 1967. Official fees not itemized and disclosed are a part of the "finance charge," 15 U.S.C., §1605(d)(1), see Federal Reserve Regulation Z, §226.4(a) and (b); under the federal requirements and thus would be given a treatment different from that required in Missouri. In Missouri official fees are designated as such and disclosed as a separate item, see §365.020(6), RSMo Supp. 1967, Laws 1963 p. 466 §2; §365.070-6(8), RSMo Supp. 1967, Laws 1963, p. 466; §408.250(10), RSMo Supp. 1967, Laws 1961, p. 638 §2; §408.260-5(5), RSMo Supp. 1967, Laws 1965, p. 95 §2.

As has been previously mentioned, the terms "unpaid balance" and "principal balance" would not necessarily be represented by the same numerical figure due to the differing methods of calculation and assignment of cost figures used under the Missouri and federal systems of disclosure. Also set forth above is our conclusion that "finance charge" under the federal disclosure requirements does not have the same meaning or contain the same elements as either "time price differential" or "time charge" under state law.

Mr. C. W. Culley

Your next specific question is:

"Does the use of the term 'previous balance', which is defined in §226.7(b) (1) as being 'the outstanding balance in the account at the beginning of the billing cycle', and the term 'new balance', which is defined in §226.7(b) (9) as being 'the outstanding balance in the account on the closing date of the billing cycle', satisfy the requirements of §408.290 2. (1) which calls for disclosure of 'the total unpaid balance under the retail charge agreement at the beginning and end of the period'?"

It is the view of this office that compliance with the federal requirement in this regard is consistent with the corresponding state requirements, for the reason that the numerical information disclosed in complying with the federal requirements will be precisely the same numerical information which the state statute requires.

Your next question is:

"Will the use of the federally required term 'finance charge' satisfy the state requirement of §408.290 2(4) for disclosure of 'the amount of the time charge'?"

As mentioned previously, the federal term "finance charge" may contain elements considerably different from that contemplated by the state term "time charge," and thus the various terms may be represented by different figures depending upon whether certain elements are involved in a given transaction or not, e.g., insurance. Retail charge agreements may well represent a situation where the various "elements" in addition to the price marked on an item are relatively few. If the only elements are a charge for interest and a charge for the service of extending credit, the total figures involved under either the federal "finance charge" or the state "time charge" would be identical. As other elements are added which are allocated differently under the two systems of disclosure, then problems of nonconformity arise in this area,

The next question is:

"Does the use of the term 'amount financed' as required by §226.8(d)(1) satisfy the requirement of §408.130 1.(5) which calls for 'the principal amount of the loan, excluding interest'?"

It is the view of this office that the terms are not necessarily interchangeable. "Amount financed" in the federal requirements

Mr. C. W. Culley

does not include premiums for insurance, the latter figure being included instead in the "finance charge," Federal Reserve Regulation Z, §§226.4(5) and (6); 226.8(d)(1), 34 Fed. Reg. 2008 (1969). §367.170, RSMo 1959, provides, ". . . Insurance premiums shall not be considered as interest, service charges or fees in connection with any loan. . . ." §408.130-1(5), RSMo Supp. 1967, requires that "The principal amount of the loan excluding interest;" be disclosed. Thus where insurance is required, the figure which represents the "principal amount of the loan," under the Missouri requirement, may well differ from the figure which represents the "amount financed."

The final question is:

"Does the disclosure of the dollar amount called 'finance charge' and the interest rate called 'annual percentage rate' as required by Regulation Z satisfy the requirement of 'the rate or amount of interest as the contract may provide' [§408.130 1. (6)]?"

It is the view of this office that the federally required disclosure in this regard is not necessarily the equivalent of the state disclosure requirement and therefore the federal requirement must prevail. As mentioned previously, "finance charge" may include a number of items in addition to interest charges. Further, the "annual percentage rate" is not a figure which reflects only interest charges. The "annual percentage rate" of "finance charge" is what is involved in the federal disclosure, 15 U.S.C., §1606, Federal Reserve Regulation Z, §226.5, 34 Fed. Reg. 2004, 2017 (1969). The elements and calculations of the "annual percentage rate" being different from the elements and calculations for determining the "rate or amount of interest," the resulting figures would also differ.

#### CONCLUSION

It is the opinion of this office that where there is a conflict between state provisions on disclosure of credit information and federal law, as set forth in Title 1 of the Federal Consumer Credit Protection Act, known as the "Truth In Lending Act," and "Federal Reserve Regulation Z," regulated extenders of credit in Missouri to whom the federal law applies are required only to make those disclosures of credit information required by federal law. The principal divergencies between the federal and the Missouri system are in their treatment of items such as insurance and fees paid for official acts, including registration and licensing. The Missouri scheme contemplates that these items be included in the principal balance, but under the federal provisions they are considered as part of the charge for financing unless individually itemized.

Mr. C. W. Culley

If a creditor wishes to make inconsistent disclosures as required by Missouri law, he must do so in the manner prescribed by Federal Reserve Regulation Z, §226.6(c).

The federal law supersedes the Missouri law only to the extent of any inconsistency, however, and regulated extenders of credit in Missouri must comply with state requirements in all other situations. An example set forth above is the Missouri requirement that where a retail credit sale involves a trade-in, the contract must include "A brief description of the goods traded-in," see §408.260-5(2), RSMo Supp. 1967; §365.070-6(2), RSMo Supp. 1967; these provisions do not conflict with federal law and Missouri creditors must therefore comply with them.

Additionally, the requirements of the Missouri statutes for retail time and installment contracts to contain a specified "notice to the Buyer"--see §365.070-2, RSMo Supp. 1967; §408.260-5, RSMo Supp. 1967--are not superseded by federal law and thus remain in full force and effect. A further requirement of the Missouri laws which, by way of example, must also be complied with is the provision of §408.290-1, RSMo Supp. 1967, that every retail charge agreement shall be in writing and shall be signed by the retail buyer.

The foregoing instances are cited merely by way of illustration and are not meant to be a complete listing. Missouri law is superseded by the federal law only to the extent of any actual inconsistency. Furthermore, one who does not come within the coverage of the federal law must comply with all applicable provisions of Missouri law whether or not they are inconsistent with federal law. For example, a Missouri retail seller who does not regularly extend or arrange for the extension of credit, and thus is not covered by the federal act, 15 U.S.C., §1602(f), but who makes a sale under a retail time or installment contract must comply with the applicable Missouri statutory scheme in full.

Answers to your specific questions are as follows:

1) Disclosure of the federally prescribed "unpaid balance" is not always consistent with the requirements of subdivision (9) of §365.070-6, and subdivision (6) of §408.260-5 (principal balance).

2) Disclosure of the federally prescribed "finance charge" is not always consistent with subdivision (10) of §365.070-6, and subdivision (7) of §408.260-5, which use the terms "time price differential" and "time charge" respectively.

3) Disclosure of the federally prescribed "total of payments" is consistent with subdivision (10) of §365.070-6, and subdivision (8) of §408.260-5 which use the term "time balance."

Mr. C. W. Culley

4) Disclosure of the federally prescribed "deferred payment price" is consistent with the requirements of subdivision (12) of §365.070-6 and subdivision (9) of §408.260-5 (time sales price.)

5) There are substantive differences between certain terms required by Regulation Z and related requirements of the Missouri "motor vehicle time sales act" and "retail credit sales act" which make it unnecessary for a creditor who must make the federally required disclosures to comply with Missouri law.

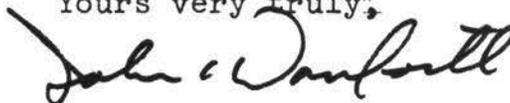
6) In retail charge agreements, disclosure of the federally prescribed "previous balance," which is defined in §226.7(b)(1) as being "the outstanding balance in the account at the beginning of the billing cycle," is compatible with the requirements of §408.290-2(1) which calls for disclosure of "the total unpaid balance under the retail charge agreement at the beginning and end of the period."

7) Disclosure of the federally required term "finance charge" is not always consistent with the state requirement of §408.290-2 (4) for disclosure of "the amount of the time charge."

8) In small loan transactions, disclosure of the federally prescribed term "amount financed" as required by §226.8(d)(1) is not always consistent with the requirement of §408.130-1(5) which calls for "the principal amount of the loan, excluding interest."

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Roger C. Bern.

Yours very truly,



JOHN C. DANFORTH  
Attorney General